

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.12.1704, Permit)	ON PROPOSED AMENDMENT
Application - Existing Legal Demands)	
and 36.12.1706, Permit Application)	
Criteria - Adverse Effect)	

To: All Concerned Persons

1. On July 24, 2008, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (lower floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than July 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-0533, e-mail kovercast@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

36.12.1704 PERMIT APPLICATION - EXISTING LEGAL DEMANDS

(1) Legal demands usually exist on the source of supply or its downstream tributaries and may be affected by a proposed water right application, including prior appropriations and water reservations. These existing legal demands will be senior to a new application and the senior rights must not be adversely affected. :

(a) an applicant may use a plan for mitigation or aquifer recharge, as generally defined in 85-2-102, MCA, as a means of showing water is legally available.

(2) through (4) remain the same.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1706 PERMIT APPLICATION CRITERIA - ADVERSE EFFECT

(1) remains the same.

(2) The applicant's plan may include the use of mitigation or aquifer recharge as defined in 85-2-102, MCA, as a means of offsetting any adverse effect.

(2) remains the same, but is renumbered (3).

~~(3)~~ (4) For surface water applications, in addition to (1), ~~and (2), and (3)~~, the applicant shall explain the rate and timing of depletions from the source of supply and its downstream tributaries and what effect that will have on other water rights.

~~(4)~~ (5) For groundwater applications, in addition to (1), ~~and (2), and (3)~~, the applicant shall describe how water levels in wells of prior water rights will be lowered and the rate, timing, and location of any depletions from hydraulically connected surface waters.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

REASONABLE NECESSITY: Current statutes pertaining to basin closure areas specifically allow for aquifer recharge and mitigation plans. Such plans are used to offset a new use of water that may create an adverse effect to a senior water right. The amendments help to clarify for the public that aquifer recharge or mitigation plans can be used in any area of the state, not only in basin closure areas. These amendments are needed to make that option known.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than July 24, 2008.

5. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (4) above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on June 9, 2008.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on June 16, 2008.